



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9751-7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed settlement to address a lawsuit filed by Public Service Company of Oklahoma (“Plaintiff”) in the United States Appeals Court for the Tenth Circuit: Public Service Company of Oklahoma v. U.S. Environmental Protection Agency, et al., No. 12-9524. On February 24, 2011, Plaintiff timely filed a Petition for Review, challenging the issuance of EPA’s final rule entitled, “Approval and Promulgation of Implementation Plans; Oklahoma; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determinations,” 76 Fed. Reg. 81,728 (Dec. 28, 2011) (the “Final Rule”). The Final Rule partially approved and partially disapproved Oklahoma’s state implementation plan (“SIP”) submitted under the “visibility” and “interstate transport” provisions of the Clean Air Act (“CAA”). The Final Rule included a federal implementation plan (“FIP”) establishing Best Available Retrofit Technology (“BART”) emission limitations on sulfur dioxide (“SO₂”) for Units 3 and 4 of Plaintiff’s Northeastern plant (“Plaintiff’s Units”) to address the visibility and interstate transport provisions of the CAA. On March 26, 2012, Sierra Club (“Intervenor”) filed a timely motion to intervene. The motion was granted March 27, 2012. The proposed settlement agreement establishes a deadline for EPA to take action on a SIP to be drafted and submitted by Oklahoma addressing Plaintiff’s Units.

DATES: Written comments on the proposed settlement agreement must be received by [insert date 30 days after publication date].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2012-0826, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5571; fax number (202) 564-5603; email address: anderson.lea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement.

The proposed settlement agreement would resolve a lawsuit challenging the issuance of EPA's final rule partially approving and partially disapproving Oklahoma's SIP submitted under the "visibility" and "interstate transport" provisions of the CAA, 42 U.S.C. § 7410, 7491, and 7492. The Final Rule included a FIP establishing BART emission limitations on SO₂ for Units 3 and 4 of Plaintiff's Northeastern plant to address the visibility and interstate transport provisions of the CAA. Specifically, the proposed settlement agreement outlines the timeframe in which

Oklahoma Department of Environmental Quality (“ODEQ”) develops and the Oklahoma Secretary of Environment submits to EPA for review SIP revisions containing specific elements as spelled out in Attachment A of the settlement agreement to address the “visibility” and “interstate transport” provisions of the CAA, 42 U.S.C. § 7410, 7491, and 7492. In turn, the proposed settlement agreement establishes a deadline for EPA to take final action on Oklahoma’s visibility and interstate transport SIP revisions addressing Plaintiff’s units within six months from the date of EPA’s determination that the revisions meet the requirements of the CAA consistent with 42 U.S.C. § 7410(k)(1)(B). Because this Agreement requires ODEQ to develop and propose SIP revisions and the Oklahoma Secretary of Environment (“Secretary”) to submit these SIP revisions to EPA under the visibility and interstate transport provisions of the CAA, and because ODEQ and the Secretary prefer to regulate Plaintiff under such SIP revisions rather than EPA’s FIP, ODEQ and the Secretary are parties to the settlement agreement as are the Plaintiff and the Intervenor. After EPA fulfills its obligations under the proposed settlement agreement, Plaintiff, Intervenor, and EPA will file a joint stipulation of dismissal of Plaintiff’s Petition for Review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the proposed settlement agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

Agreement.

A. How Can I Get A Copy Of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-0826) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the

comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Lorie J. Schmidt,
Associate General Counsel.

[FR Doc. 2012-27704 Filed 11/13/2012 at 8:45 am; Publication Date: 11/14/2012]